

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

R. R. DONNELLEY & SONS
COMPANY, a Delaware corporation,

Plaintiffs,

v.

JOHN PAPPAS III, an individual,
MERILIZ, INC., dba DOME PRINTING,
PM CORPORATE GROUP, INC. dba PM
PACKAGING, DOME PRINTING AND
PACKAGING, LLC and DOES 1-10,

Defendants.

No. 2:21-cv-00753 DJC AC

ORDER

This matter is before the court on multiple discovery motions. Plaintiff brings four motions to compel against defendants Dome Printing (ECF Nos. 128, 129) and PM Corporate Group (ECF Nos. 130, 131). Joint statements to each of these motions were filed as attachments to ECF No. 137. Defendant Dome Printing brings two motions to compel against plaintiff. ECF Nos. 144, 145. A consolidated joint statement for these motions is filed at ECF No. 148. All motions were taken under submission. For the reasons stated below, the court DENIES each motion.

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I. Relevant Background

This action was filed on April 26, 2021, and the operative Third Amended Complaint was filed under seal on April 17, 2023. ECF No. 104. In the Third Amended Complaint, plaintiff R.R. Donnelley & Sons Company (“RRD”), a global integrated communications provider, asserts that it filed this case “to prevent John Pappas III, a former senior, long-tenured, and highly compensated RRD employee, and his new employer, Meriliz Inc., dba Dome Printing (“Dome”) (which was recently acquired by PM Corporate Group, Inc., through its wholly-owned subsidiary Defendant Dome Printing and Packaging LLC) from using multiple proprietary and confidential documents that Pappas was entrusted to hold in confidence and use for the benefit of only RRD. RRD also seeks to prevent Pappas and Dome from reaping the benefits of Pappas’ multiple breaches of the duty of loyalty that he owed to RRD as one of its employees.” ECF No. 79 at 3. Plaintiff alleges that Pappas solicited clients to move from RRD to Dome and provided Dome with RRD’s confidential and proprietary documents. *Id.* Plaintiff alleges Dome, which is a direct competitor to plaintiff, was aware of and involved in Pappas’ misconduct, and awareness extended to Dome’s then-president Misha Pavlov. *Id.* at 3.

This ongoing case has been before multiple judges and has a complex procedural history.
In January 2021, Pappas terminated his employment at RRD to pursue a job opportunity at
Meriliz, Inc dba Dome Printing (“Meriliz”). On April 1, 2022, Meriliz entered into an Asset
Purchase Agreement (“APA”) with Dome Printing & Packaging LLC (“DPP”). ECF No. 137-1
at 4. DPP is a wholly owned subsidiary of PM Corporate Group, dba PM Packaging (“PMC”).
Id. On April 6, 2022, plaintiff filed a motion for contempt asserting Pappas intentionally
spoliated evidence. ECF No. 47. The motion for contempt was set to be heard by District Judge
John A. Mendez. Id.

24 Subsequently, plaintiff moved for leave to amend the complaint to add PMP as a
25 defendant, asserting it was the purchaser of Dome. ECF No. 71. Defendants Merlitz/Dome filed
26 a statement of non-opposition to the motion to amend. ECF No. 73. On July 1, 2022, discovery

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1 closed as to defendants Meriliz and Pappas. ECF No. 27 at 5.¹ On October 24, 2022, the court
2 granted a motion from plaintiff to file an amended complaint naming PMP as a defendant-open
3 discovery, but only on the issue of PMP's liability. ECF No. 78. On April 29, 2023, a minute
4 order was issued transferring this case to Chief District Judge Kimberly J. Mueller in light of
5 Judge Mendez taking senior status, and the motion for contempt was submitted on the papers
6 before Judge Mueller. ECF Nos. 53, 70. On August 29, 2022, a minute order issued reassigning
7 this case to District Judge Dale A. Drozd. ECF No. 74. On October 10, 2022, Judge Drozd
8 issued a minute order vacating all pending hearings on civil motions. ECF No. 77. On October
9 24, 2022, Judge Drozd issued an order allowing plaintiff to file the operative Second Amended
10 Complaint, and not substantively addressing the motion for contempt. ECF No. 78.

11 On March 7, 2023, the parties filed a stipulation to dismiss PMP and add as defendant PM
12 Corporate Group ("PMC") because PMP was a defunct entity and PMP was the correct
13 defendant. This case was again re-assigned, to District Judge Daniel J. Calabretta, on April 6,
14 2023. ECF No. 104. On April 13, 2023, Judge Calabretta granted the stipulation to dismiss PMP
15 and add PMC. ECF No. 105. Plaintiffs filed the operative Third Amended Complaint under seal
16 at ECF No. 106. Judge Calabretta ordered the parties to file a status report, and a status report
17 was filed on April 26, 2023. ECF No. 107. In that report, plaintiff noted that the motion for
18 contempt remained pending. ECF No. 107 at 3. On October 16, 2023, Judge Calabretta issued a
19 revised scheduling order closing fact discovery on January 12, 2024. ECF No. 127. This order
20 states this discovery extension is limited in scope and shall address only "whether and to what
21 exten[t] Dome Printing and Packaging, LLC and/or PM Corporate Group, Inc., may be liable for
22 Plaintiff's causes of action."

23 Through all these procedural twists and turns, discovery was progressing between the
24 plaintiff and the various defendants. Many motions to compel discovery were noticed and then
25 withdrawn. ECF Nos. 39 and 41; 64 and 67; 119 and 123; 120 and 124. Against that
26 background, five motions for discovery are now before the undersigned.

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28 ¹ Discovery remains closed as to these defendants.

II. Motion to Compel

A. Standard on Motion to Compel

The scope of discovery in federal cases is governed by Federal Rule of Civil Procedure 26(b)(1). The current Rule states:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Relevancy to the subject matter of the litigation “has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Relevance, however, does not establish discoverability; in 2015, a proportionality requirement was added to Rule 26. Under the amended Rule 26, relevance alone will not justify discovery; discovery must also be proportional to the needs of the case.

A party seeking to compel discovery has the initial burden to establish that its request is proper under Rule 26(b)(1). If the request is proper, the party resisting discovery has the burden of showing why discovery was denied; they must clarify and support their objections. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir.1975). General or boilerplate objections, without explanation, are not prohibited but are insufficient as a sole basis for an objection or privilege claim. Burlington Northern & Santa Fe Ry. v. United States Dist. Court, 408 F.3d 1142, 1149 (9th Cir.2005).

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1 B. Motion to Compel DPP's Responses to Special Interrogatories (ECF No. 128)

2 Plaintiff moves to compel supplemental responses to two special interrogatories, which
3 read as follows: Interrogatory 12: "Identify ALL entities that appear in the customer list labeled
4 DOME0000585 that YOU contend were pre-existing in YOUR systems at the time PAPPAS
5 uploaded the list to what were then DOME PRINTING's systems." Interrogatory 13: "Identify
6 the amount of business YOU did since January 1, 2018, with each of the entities YOU
7 identified in response to Interrogatory No. 13." ECF No. 137-1 at 11-19. The court and parties
8 presume that Interrogatory No. 13 intended to reference, in its body, Interrogatory 12 rather than
9 itself. Id. at 19. DPP initially objected on several grounds and responded that it could not answer
10 because DOME0000585 does not contain a customer list. Id. at 12. It subsequently amended its
11 response to note that in meet and confer efforts plaintiff stated the interrogatory was intended to
12 reference DOME0000588, and to avoid a discovery dispute, DPP agreed to amend its response
13 to address that document instead. Id. at 13.

14 In DPP's amended response, it stated that while the document at issue contained 649
15 contacts, it "only addresses those contacts with which it did business during the applicable time
16 frame" which it asserted began on April 1, 2022, the date DPP purchased the assets of Merlitz.
17 ECF No. 137-1 at 13. Plaintiff argues that DPP's "response identifying only 'contacts'
18 with which it did business during the applicable time frame' is insufficient. For example, it does
19 not include customers that DPP tried to do business with but was unsuccessful... Even if that
20 information has not been used to obtain business yet does not mean that it will not be used to
21 DPP's benefit tomorrow. RRD wants its information back and needs to know what information
22 was preexisting on DPP's systems about these customers, if any, so that it can identify what needs
23 to be remediated and deleted going forward. This information is highly relevant and within the
24 scope of discovery into Defendants' liability." ECF No. 137-1 at 15.

25 Upon full review of the interrogatories and responses, the court finds that there is nothing
26 to compel because the responses fully address the interrogatories as asked (and even beyond what
27 was asked, by addressing the 588 document, which was not expressly referenced in the
28 interrogatories). DPP did identify all entities with which it did business in the list of 641 contacts

1 – this is what the interrogatory asks for. Defendant then indicates that all of these entities were
2 previously known to Defendant, just as requested in the interrogatory. The court finds there is
3 nothing more to compel and this motion is DENIED.

4 C. Motion to Compel DPP's Responses to Requests for Production (ECF No. 129)

5 According to defense counsel's declaration, several of the disputes as to RFPs addressed
6 in this motion have been mooted by a subsequent production. Richard Decl. Ex. 23. The
7 resolved disputes include those relating to RFPs 11, 13, 14, 15, 16, 20, and 40. ECF No. 137 at 4-
8 21. The motion is therefore DENIED as moot as to RFPs 11, 13, 14, 15, 16, 20, and 40.

9 Remaining requests for production at issue include RFPs 21-26, which are variations of
10 the same interrogatory with different redacted names. These RFPs each request “ALL
11 DOCUMENTS, including but not limited to bids, proposals, or requests for proposals or invoices,
12 from January 1, 2022, to the present date, between YOU and [redacted] including ANY principal,
13 representative or agent thereof.” The parties’ arguments with respect to each of these RFPs are
14 the same. Defendant initially objected on the grounds of burden and relevancy, and argued that
15 that Merlitz was not purchased until April 2022 and therefore the request was not narrowly
16 tailored. ECF No. 137 at 12. Plaintiff counters that the “objection that only information from
17 before DPP purchased Meriliz is relevant is [meritless because] RRD was damaged by the use of
18 its information and needs to calculate those damages. RRD contends that DPP is liable both as a
19 successor to Meriliz and directly based on its continuing misconduct.” ECF No. 137 at 13.

20 In its opposition to the motion to compel, DPP argues the RFP is egregiously overbroad
21 because it seeks “all documents” pertaining to a mutual customer without limitation. ECF No.
22 137 at 14. Defendant argues that Meriliz already responded to identical requests in February of
23 2022, and that plaintiff’s argument that it needs to know whether any information is “still in use”
24 by DPP is disingenuous when it doesn’t identify whether any probative information was
25 uncovered from Meriliz. The court agrees with DPP. At a minimum, having the responses from
26 Meriliz should have allowed plaintiff to narrow these requests. As they stand, they are unduly
27 burdensome and disproportionate to the needs of the case. The motion is therefore DENIED as to
28 RFPs 21, 22, 23, 24, 25 and 26.

1 Remaining are disputes as to RFPs No. 59 and 63. RFP No. 59 requests “Any and all
 2 DOCUMENTS demonstrating YOUR reports to members, partners, shareholders, or other similar
 3 documents prepared by YOU and relating to YOUR financial condition for the years 2019 to the
 4 present.” ECF No. 137 at 22. Defendant raised various objections including relevance (arguing
 5 its financial condition is not related to any claim and defense), burden, and unreasonableness of
 6 time and scope. Id. at 22-23. Plaintiff argues in the joint statement that this request is “directly
 7 relevant to the claims and defenses asserted in this case and are directly in the
 8 spotlight of the limited discovery being conducted as they relate to DPP and PMC’s liability and
 9 punitive damage,” and provides the following example: “if DPP was not adequately capitalized
 10 by PMC, this weighs in favor of successor liability and shows that it would be unjust to treat
 11 PMC and DPP as separate entities.” ECF No. 137 at 23.² Plaintiff asserts that discovery into
 12 DPP’s financial records “go directly to RRD’s alter ego allegations against both DPP and PMC,
 13 DPP and PMC’s continuing liability, and to RRD’s damages.” ECF No. 137 at 23.

14 DPP argues that because there is no alter-ego theory alleged in the complaint, this request
 15 is beyond the scope of permissible discovery. Id. at 24. Upon a review of the operative Third
 16 Amended Complaint, the court agrees that these requests are beyond the scope of claims asserted
 17 against DPP. ECF No. 106 (sealed). As to punitive damages, defendant is correct that “[a]
 18 request for non-current financial information is irrelevant to a punitive damages determination.
 19 Even where a claim for punitive damages has some factual support, discovery related to financial
 20 status should be limited to net worth and the production of an annual or period balance sheet
 21 under an appropriate protective order.” E.E.O.C. v. California Psychiatric Transitions, 258
 22 F.R.D. 391, 394 (E.D. Cal. 2009). The request is overbroad, unduly burdensome, and not
 23 relevant to claims or defenses. The motion to compel is DENIED as to RFP 59.

24 The final RFP, No. 63, requests “Any and all DOCUMENTS demonstrating PAPPAS’
 25 compensation, including bonuses and commissions, from the beginning of his employment with
 26 YOU to the present.” ECF No. 137 at 25. DPP objected to this RFP on grounds of overbreadth

27 ² DPP also argues it was not created until March of 2022, and so the request dating back to 2019
 28 is necessarily overbroad. ECF No. 137 at 24-25.

1 and relevance. Id. RDD argues that this RFP is appropriate because if “Pappas is receiving
2 compensation for his sales to the customers, he stole information about, that would show DPP’s
3 approval of Pappas’ actions and establish DPP’s liability (as well as contempt of the injunction
4 currently in place).” The court finds this justification inadequate. As DPP points out, discovery
5 as to Pappas is closed, and the connection between this RFP and DPP’s liability is tenuous at best.
6 Thus, the motion is DENIED as to RFP No. 63.

7 D. Motion to Compel PMC’s Responses to Special Interrogatories (ECF No. 130)

8 Plaintiff moves to compel amended responses to several interrogatories issued to PMC.
9 First, plaintiff seeks to compel an amended response to Interrogatory No. 1, which reads:
10 “Describe PAPPAS’ employment relationship with PMP, including but not limited to
11 employment start date, job title, and job duties.” ECF No. 137-2 at 3. Defendant PMC
12 responded: “PAPPAS is not employed by PM Corporate Group, Inc. Defendant advises
13 Propounding Party to refer to the concurrently served responses of Dome Printing and Packaging,
14 LLC, the party best situated to provide a response to this request and purchaser of Meriliz Inc’s
15 asset.” Id. at 4. Plaintiff argues this response is unacceptable because PMC “states it does not
16 employ [Pappas], and defers to DPP (which claims that it employs Pappas), but that is not
17 sufficient, especially given that the evidence suggests that Pappas does have an employment
18 relationship with PMC.” ECF No. 137-2. Plaintiff’s argument is unpersuasive. Disagreement
19 with an answer is not grounds to compel an amended answer. PMC answered the question as
20 asked and the motion as to Interrogatory No. 1 is DENIED.

21 The remaining interrogatories at issue are related to those at issue in the motion to compel
22 amended interrogatory responses from DPP, addressed above. They read as follows: No. 11:
23 “Identify ALL customers or businesses YOU contacted that appear on the customer list PAPPAS
24 uploaded to what were then DOME PRINTING’s systems on or about January 7, 2021, labeled
25 DOME00000585, including when you contacted them.” No. 12: “Identify ALL entities that
26 appear in the customer list labeled DOME0000585 that YOU contend were pre-existing in YOUR
27 systems at the time PAPPAS uploaded the list to what were then DOME PRINTING’s systems.”
28 No. 13: “Identify the amount of business YOU did since January 1, 2018, with each of the entities

1 YOU identified in response to Interrogatory No. 13.” ECF No. 137-2 at 12-19. As with the
2 dispute between plaintiff and DPP, PMC agreed during meet and confer “to amend to reference
3 DOME00000588 in each response where DOME00000585 was referenced.” ECF No. 137-2 at
4 15.

5 PMC raises the unique consideration that although responding to these interrogatories
6 requires PMC “to analyze the information contained on the document bates labeled
7 DOME00000588[,] Plaintiff has taken the position that PMC cannot review the information in
8 that document and has threatened a contempt motion against PMC for testimony demonstrating
9 its Rule 30(b)(6) deponent reviewed the document in preparation for deposition topics that cite to
10 it.” Id. The court agrees with PMC that for this reason, the request to compel amended responses
11 should be denied; PMC cannot be required to provide information related to a document it is not
12 allowed to view. Further, the court reviewed PMC’s responses, which the court finds fully
13 responsive. PMC explained it “was never in possession of any RRD information including the
14 information allegedly contained in DOME00000588. PM Corporate Group Inc. never operated or
15 controlled Meriliz’s systems.” Id. at 17. The responses are adequate and the motion to compel
16 amended responses is DENIED.

17 E. Motion to Compel PMC’s Responses to Requests for Production (ECF No. 131)

18 RRD served Requests for Production on PMC on April 20, 2023. PMC responded on
19 June 5, 2023, and following meet and confer discussions, served amended responses to some of
20 those requests on September 11, 2023. Plaintiff alleges PMC’s “responses remain deficient as to
21 the following requests, which are relevant to the issue of unity and identity of interest of PMC
22 with respect to DPP.” ECF No. 137-3 at 3.

23 Several of the RFPs at issue are related to PMC’s finances. RFP No. 7 reads: “YOUR
24 financial statements, from June 1, 2021, to the present date, including documents sufficient to
25 show PMP’s current assets, accounts receivable, amounts owing to ANY of PMP’s creditors, and
26 PMP’s income and profits.” ECF No. 137-3 at 3. An additional RFP at issue, RFP No. 56, seeks
27 similar documents: “Any and all DOCUMENTS relating to YOUR balance sheets, profit and loss
28 statements, asset and liability statements, annual reports, financial statements, books of account,

1 and other similar documents reflecting YOUR financial condition from 2019 to the present.” Id.
2 at 17. Finally, RFP No. 59 reads “Any and all DOCUMENTS demonstrating YOUR reports to
3 members, partners, shareholders, or other similar documents prepared by YOU and relating to
4 YOUR financial condition for the years 2019 to the present.” Id. at 22.

5 With respect to each of these RFPs, plaintiff makes the same arguments as in the motion
6 discussed above regarding alter ego theory and punitive damages. Again here, the court agrees
7 with defendant that the requests are overbroad, irrelevant, and unduly burdensome. Again, there
8 is no alter-ego theory alleged in the operative complaint, thus the requests are beyond the scope of
9 permissible discovery. ECF No. 137-3 at 6. As to punitive damages, defendant is correct that “[a]
10 request for non-current financial information is irrelevant to a punitive damages determination.”
11 California Psychiatric Transitions, 258 F.R.D. at 394. The motion to compel is DENIED as to
12 RFP Nos. 7, 56, and 59.

13 Two additional RFPs at issue seek financial information, but in the form of tax
14 documents. RFP No. 57 reads “Any and all DOCUMENTS demonstrating YOUR corporate tax
15 returns filed by YOU for the years 2019 to the present” and RFP No. 58 reads “Any and all
16 DOCUMENTS demonstrating YOUR federal tax form 1040 Schedule Cs filed by YOU for the
17 years 2019 to the present.” Id. at 18-21. The court agrees with defendant that amended responses
18 to these requests should not be compelled for the reasons discussed above. Further the court
19 notes that The Ninth Circuit recognizes “a public policy against unnecessary public disclosure [of
20 tax returns, which] arises from the need, if the tax laws are to function properly, to encourage
21 taxpayers to file complete and accurate returns.” Premium Serv. Corp. v. Sperry & Hutchinson
Co., 511 F.2d 225, 229 (9th Cir.1975). The motion to compel is DENIED as to RFP Nos. 57 and
22 58.

23 Plaintiff’s RFP No. 52 reads “ALL DOCUMENTS reflecting YOUR knowledge of the
24 above-entitled action prior to YOUR acquisition of DOME PRINTING and/or its assets on or
25 about April 1, 2022.” ECF No. 137-3 at 8. In PMP’s amended response, it made a production
26 and stated “[a]dditional responsive documents are being withheld pursuant to attorney client
27 privilege documents identified above and will be identified in a privilege log. Defendant has
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1 produced all responsive non-privileged documents in its possession, custody, or control.” ECF
2 No. 137-3. Having made this statement that all non-privileged responsive documents have been
3 produced, the court takes defendant at its word and finds there is nothing to compel. The motion
4 is DENIED as to RFP No. 52.

5 Plaintiff’s RFP No. 53 reads “ALL DOCUMENTS identified in YOUR responses to
6 RRD’s Special Interrogatories, Set One, to YOU, served concurrently with these requests.” ECF
7 No. 137-3 at 15. Again, PMP submitted an amended response that made a production and stated
8 that other “responsive documents are being withheld pursuant to attorney client privilege
9 documents identified above and will be identified in a privilege log. Defendant has produced all
10 responsive non-privileged documents in its possession, custody, or control.” Id. at 16. Having
11 made this statement that all non-privileged responsive documents have been produced, the court
12 takes defendant at its word and finds there is nothing to compel. The motion is DENIED as to
13 RFP No. 53.

14 F. Motion to Compel Production of Documents (ECF No. 144)

15 Defendant DPP filed a motion to compel documents from plaintiff and noticed the motion
16 for January 10, 2024. ECF No. 145. Defendant DPP argues that plaintiff “has refused to produce
17 responsive documents to request for production of documents. Plaintiff has refused to produce
18 responsive documents despite stating that it would produce documents.” ECF No. 149 at 2.
19 Pursuant to the October 16, 2023 Scheduling Order, fact discovery is to be completed by January
20 12, 2023. ECF No. 127. That order specifies, “The parties are advised that motions to compel
21 must be filed in advance of the discovery completion deadlines so that the Court may grant
22 effective relief within the allotted discovery time. A party’s failure to have a discovery dispute
23 heard sufficiently in advance of the discovery cutoff may result in denial of the motion as
24 untimely.” Id. at p. 3, fn. 1. Defendant acknowledges that plaintiff’s responses were served as of
25 November 2023, and the parties were in meet and confer discussions during that time. ECF No.
26 149 at 5. Despite that, defendant noticed this motion for two days before the discovery cutoff,
27 which makes the motion untimely. Because the motion is untimely, it is DENIED.

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III. Conclusion

2 Plaintiff's motion to compel Dome's amended response to requests for production at ECF
3 No. 129 is DENIED. Plaintiff's motion to compel Dome's amended responses to special
4 interrogators at ECF No. 128 is DENIED. Plaintiff's motion to compel PM Corporate Group's
5 amended responses to special interrogatories at ECF NO. 130 is DENIED. Plaintiff's motion to
6 compel PM Corporate Group's amended responses to requests for production at ECF No. 131 is
7 DENIED. Defendant DPP's motion to compel at ECF No. 144 is DENIED.

8 IT IS SO ORDERED.

9 || DATED: January 11, 2024

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE